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RECENT CASES.

CHECK—PAYMENT AFTER DEATH OF DONOR—LIABILITY OF BANK.—PULLEN ET AL. V. PLACER COUNTY BANK, 71 PAC 83 (CAL.).—*Held*, that a bank paying a check with notice of the drawer's death is liable to his estate. *McFarland and Henshaw, JJ., dissenting.*

It has been held that a check given for a good consideration is not revoked by the death of the drawer before its presentment. *Lewis v. International Bank*, 13 Mo. App. 202. And, on the other hand, that a check is revoked by the drawer's death before acceptance. *Nat. Comm. Bank v. Miller*, 77 Ala. 168. The drawer's death has been held to revoke a bank's authority to pay a check delivered to the payee as a gift when the administrator had undertaken to revoke the check and the bank had therefore refused to pay it. *Simmons v. Society*, 31 Ohio St. 457. The text-book writers with a few exceptions say that the death of the drawer revokes. *Morse, Banks & Banking*, 4th ed., sec. 400; *Byles, Bills* (5th Am. ed.), 101; *Chitty, Bills* (13th Am. ed.), 484. But see *Daniel, Neg. Instr.*, 5th ed., sec. 1618b, and discussion maintaining the opposite view in 3 Va. L. J. 323. It is generally agreed that if the bank has no notice of the drawer's death it will not be liable.

CONSTITUTIONAL LAW—"EQUAL PROTECTION OF THE LAW"—PEDDLER'S LICENSE.—STATE V. MITCHELL, 53 ATL. 887.—The Maine statute (Laws 1901, c. 227), makes a distinction between peddlers who own and pay taxes on a stock in trade to the amount of \$25, and those who pay a less tax on such stock in trade, exempting the former from paying license fees, while requiring the latter to pay them. *Held*, that such discrimination is in violation of the Fourteenth Amendment, which grants to all the equal protection of the law.

The opinion in this case gives a concise and comprehensive summary as to what constitutes the "equal protection of the law," guaranteed by the Fourteenth Amendment. There can be no discrimination between persons similarly situated. *Barbier v. Connolly*, 113 U. S. 27; *Strauder v. West Va.*, 100 U. S. 303. But there may be between localities, kinds of business, etc. *Leavitt v. R. R. Co.*, 90 Me. 153; *Mo. Pac. R. R. v. Mackey*, 127 U. S. 205. Yet even such discrimination must be reasonable, and based upon real differences in situation or conditions. *Connolly v. Pipe Co.*, 184 U. S. 540; *Yick Wo v. Hopkins*, 118 U. S. 356; *R. R. Co. v. Ellis*, 165 U. S. 150. The great weight of authority supports the present case in holding that a discrimination on account of the amount of business done is a mere arbitrary discrimination, not based on any inherent difference in kind. *Cotting v. Stock Yards*, 183 U. S. 79; *State v. Haun*, 61 Kan. 146; *State v. Gardner*, 58 Ohio 599.

CONTRIBUTORY NEGLIGENCE OF PLAINTIFF—ACTION BY ADMINISTRATOR—DEATH.—O'SHEA V. RY. CO., 79 N. Y. SUPP. 890.—*Held*, that there can be no recovery by a father, the sole beneficiary of a deceased son, nine years of age,

in an action by him as administrator, when his neglect is a contributing cause of the injury.

This question has never before been directly passed upon in New York, but this result is in accord with the decisions of other States. *Bamberger v. Ry. Co.*, 95 Tenn. 18; *Wolf v. Ry. Co.*, 55 Ohio St. 517; *Tiffany, Death by Wr. Act*, secs. 69-71; *Beach, Contrib. Neg.*, sec. 44; *Shearm & R., Neg.*, sec. 71. Under the view taken by these authorities the question is whether the beneficiary shall be allowed to profit by his own wrongful act, and the doctrine of imputed negligence laid down in *Hartfield v. Roper*, 21 Wend. 615, does not apply. *Metcalfe v. Ry. Co.*, 12 App. Div. 147. But where the cause of action is considered a survival of the child's right, damages are a part of the child's estate, and are cast on the beneficiary by operation of law; the parent's negligence in such case could only effect his recovery as sole beneficiary by applying the doctrine of *Hartfield v. Roper, supra*. *Ry. Co. v. Groseclose's Adm'r.*, 88 Va. 267; *Wymore v. Mahaska Co.*, 78 Ia. 396. In New Jersey the court was evenly divided over the question. *Consolidated Traction Co. v. Hone*, 59 N. J. L. 275.

DOWER—ALLOTMENT—EXONERATION OF HUSBAND'S ALIENEE.—LONGSHORE *v. LONGSHORE ET AL.*, 65 N. E. 1081 (ILL.).—*Held*, where a husband has aliened land with warranty, a court of equity will exonerate the alienee by allotting dower for the whole estate out of the descended lands whenever they are of sufficient value.

This question is a new one in this court, and does not seem to have been passed upon elsewhere except in New York and Kentucky. *Wood v. Keyes*, 6 Paige 478; *Richmond v. Harris*, 102 Ky. 389. But the decision is in accord with recognized equitable principles.

EMINENT DOMAIN—DELEGATION OF POWER—PUBLIC USE.—FALLSBURG POWER AND MFG. CO. *v. ALEXANDER*, 43 S. E. 194 (VA.).—A manufacturing company, incorporated to generate power, light and heat, was granted the right of eminent domain. By the charter it had the option of devoting its products to its own use or the use of the public. *Held*, that as the public had no definite right to the use of the products, the provision giving the company the right of eminent domain was unconstitutional.

The law is becoming settled on the point involved. The right of eminent domain was given to manufacturing companies upon consideration of "general good" in *French v. Braintree Mfg. Co.*, 23 Pick. 220, and *Olmstead v. Camp*, 33 Conn. 532, and denied in *Hay v. Cohoes Co.*, 3 Barb. (N. Y.) 47. The reasons with which this policy of "general good" originated have long since ceased to exist. *Jordan v. Woodward*, 40 Me. 323. By the modern doctrine, to justify the granting of the right of eminent domain to a private corporation, the interest of the public must be well defined. *Gilmer v. Lime Point*, 18 Cal. 229. And the State must have a voice in the manner in which the public may avail itself of that use. *Board v. Hoesen*, 14 L. R. A. 114. See also *C. B. & Q. Ry. Co. v. State*, 50 Neb. 399.

EQUITY—JURISDICTION—TRESPASS—INJUNCTION.—FREER *ET AL. v. DAVIS ET AL.*, 43 S. E. 164 (W. VA.).—*Held*, that where irreparable mischief is being done to real estate, and the title of the land is in dispute, a court of equity will enjoin the trespass pending the determination in a court of law of the question of the title. Brannon, J., *dissenting*.